

WAC 208-620-010 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

"Act" means the Consumer Loan Act, chapter 31.04 RCW.

"Advertise, advertising, and advertising material" means any form of sales or promotional materials used in connection with the business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or other audio broadcasts; ~~((or))~~ internet pages, social media, instant messages, or electronic bulletin boards.

"Affiliate" means any person who controls, is controlled by, or is under common control with another.

"Annual percentage rate" has the same meaning as defined in Regulation Z, 12 C.F.R. Part 1026 (~~((formerly 12 C.F.R. Section 226)) et seq.~~)), implementing the Truth in Lending Act.

"Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. An application may be submitted in writing or electronically and includes a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

"Bank Secrecy Act" means the Bank Secrecy Act (BSA), 31 U.S.C. 1051 et seq. and 31 C.F.R. (~~((Section))~~) Part 103.

"Bond substitute" means unimpaired capital, surplus and qualified long-term subordinated debt.

"Borrower." See WAC 208-620-011.

"Business day" means Monday through Friday excluding federally recognized bank holidays.

"Commercial context" or "commercial purpose" means actions taken for the purpose of obtaining anything of value for oneself, or for an entity or individual for which the individual acts, rather than exclusively for public, charitable, or family purposes.

"Common ownership" exists if an entity or entities possess an ownership or equity interest of five percent or more in another entity.

"Creditor" has the same meaning as in the Truth in Lending Act, 15 U.S.C. 1602(f) and Regulation Z, 12 C.F.R. Part 1026 (~~((formerly 12 C.F.R. 226))~~).

"Department" means the department of financial institutions.

"Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act on the effective date of this section, and includes credit unions.

"Depository Institutions Deregulatory and Monetary Control Act" means the Depository Institutions Deregulatory and Monetary Control Act of 1980 (DIDMCA), 12 U.S.C. (~~((§))~~) Sec. 1735f-7a.

"Director" means the director of the department of financial institutions or his or her designated representative.

"Dwelling" means the same as in Regulation Z implementing the Truth in Lending Act which is a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile or manufactured home, and trailer, if it is used as a residence. See 12 C.F.R. Sec. 1026.2.

"Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. ((~~section~~)) Sec. 1691 and Regulation B, 12 C.F.R. Part 1002 ((~~formerly Part 202~~)).

"Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. ((~~Section~~)) Sec. 1681 et seq.

"Fair Debt Collection Practices Act" means the Fair Debt Collection Practices Act, 15 U.S.C. ((~~section~~)) Sec. 1692, 12 C.F.R. Part 1006.

"Federal banking agencies" means the Board of Governors of the Federal Reserve System, Comptroller of the Currency, National Credit Union Administration, Federal Deposit Insurance Corporation, and Consumer Financial Protection Bureau.

"Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. ((~~section~~)) Sec. 45(a).

"Filing" means filing, recording, releasing or reconveying mortgages, deeds of trust, security agreements or other documents, or transferring certificates of title to vehicles.

"Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

"Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. ((~~sections~~)) Secs. 2801 through 2810 and 12 C.F.R. Part 1003 (formerly Part 203).

"Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

"Individual servicing a mortgage loan" means a person who on behalf of a lender or servicer licensed by this state, or a lender or servicer exempt from licensing, who collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due, on existing obligations due and owing to the licensed or exempt lender or servicer for a residential mortgage loan when the borrower is in default, or in reasonably foreseeable likelihood of default, working with the borrower and the licensed lender or servicer, collects data and makes decisions necessary to modify either temporarily or permanently certain terms of those obligations, or otherwise finalizing collection through the foreclosure process.

For purposes of this definition "on behalf of a lender or servicer" means that the individual person is employed by the lender or servicer and does not receive any compensation or gain directly or indirectly from the borrower for performing the described activities.

"Insurance" means life insurance, disability insurance, property insurance, insurance covering involuntary unemployment and such other insurance as may be authorized by the insurance commissioner in accordance with Title 48 RCW.

"Lender" means any person that extends money to a borrower with the expectation of being repaid.

"License" means a license issued under the authority of this chapter with respect to a single place of business.

"License number" means your NMLS unique identifier displayed as prescribed by the director. Some examples of the way you may display your license number are: NMLS ID 12345, NMLS 12345, NMLS #12345, MB-12345, or MLO-12345.

"Licensee" means a person who holds one or more current licenses.

"Live check" means a loan solicited through the mail in the form of a check, which, when endorsed by the payee, binds the payee to the terms of the loan agreement contained on the check.

"Loan" means a sum of money lent at interest or for a fee or other charges and includes both open-end and closed-end transactions.

"Loan originator" means the same as mortgage loan originator.

"Loan processor." See WAC 208-620-011.

"Long-term subordinated debt" means for the purposes required in RCW 31.04.045 outstanding promissory notes or other evidence of debt with initial maturity of at least seven years and remaining maturity of at least two years.

"Making a loan" means advancing, offering to advance, or making a commitment to advance funds for a loan.

"Material litigation" means proceedings that differ from the ordinary routine litigation incidental to the business. Litigation is ordinary routine litigation if it ordinarily results from the business and does not deviate from the normal business litigation. Litigation involving five percent of the licensee's assets or litigation involving the government would constitute material litigation.

"Mortgage broker" means the same as in RCW 19.146.010. A licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a mortgage broker in the same transaction.

"Mortgage loan originator" or "loan originator" means an individual who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain (1) takes a residential mortgage loan application; or (2) offers or negotiates terms of a residential mortgage loan, including short sale transactions. An individual "offers or negotiates terms of a residential mortgage loan" if the individual:

(a) Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms; or

(b) Communicates directly or indirectly with a borrower, or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms.

Mortgage loan originator also includes an individual who for compensation or gain performs residential mortgage loan modification services or holds himself or herself out as being able to perform residential mortgage loan modification services.

Mortgage loan originator also includes an individual who holds himself or herself out as being able to perform any of the activities described in this definition. For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that the person engages in any of the activities of a loan originator, including the use of business cards, stationery, brochures, rate lists or other promotional items.

Mortgage loan originator does not include any individual who performs purely administrative or clerical tasks and does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

For the purposes of this definition, administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing of a residential mortgage loan. An individual who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

Mortgage loan originator does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law to conduct those activities, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. See the definition of real estate brokerage activity in this subsection.

This definition does not apply to employees of a housing counseling agency approved by the United States department of Housing and Urban Development unless the employees of a housing counseling agency are required under federal law to be individually licensed as mortgage loan originators.

"NMLS" means ((a)) the Nationwide Multistate Licensing System and Registry, Nationwide Mortgage Licensing System, NMLSR, or such other name or acronym as may be assigned to the multistate system developed ((and maintained)) by the Conference of State Bank Supervisors ((and the American Association of Residential Mortgage Regulators for the)) and the American Association of Residential Mortgage Regulators and owned and operated by the state regulatory registry, LLC, or any successor or affiliated entity, for the licensing and registration ((of mortgage loan originators and other license types)) of persons in the mortgage and other financial services industries.

"Out-of-state licensee" means a licensee that does not maintain a physical presence within the state, or a licensee that maintains headquarters or books and records outside Washington.

"Person" includes individuals, partnerships, associations, trusts, corporations, and all other legal entities.

"Principal" means either (1) any person who controls, directly or indirectly through one or more intermediaries, a ten percent or greater interest in a partnership, company, association or corporation; or (2) the owner of a sole proprietorship.

"Principal amount" means the loan amount advanced to or for the direct benefit of the borrower.

"Principal balance" means the principal amount plus any allowable origination fee.

"RCW" means the *Revised Code of Washington*.

"Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including (1) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; (2) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; (3) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction; (4) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and (5) offering to engage in any activity, or act in any capacity, described in (1) through (4) of this definition.

"Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. (~~(Sections)~~) Secs. 2601 et seq., and Regulation X, 12 C.F.R. Part 1024 (~~((formerly 24 C.F.R. Part 3500))~~).

"Records" mean books, accounts, papers, records and files, no matter in what format they are kept, which are used in conducting business under the act.

"Referring a delinquent loan to foreclosure" means taking any step in furtherance of foreclosure. Examples include, but are not limited to: Sending a referral to a foreclosure trustee or attorney inside or outside of the servicing entity requesting they begin the foreclosure process; making a record in written or electronic form that flags, comments, blocks, suspends or in any way indicates in the electronic record of a mortgage loan that foreclosure has begun; any such marking of an electronic record that impairs the record in a way that payments will not be applied or will be routed into a suspense account.

"Registered mortgage loan originator" means any individual who (1) meets the definition of mortgage loan originator and is an employee of: A depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration; and (2) is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system (~~(and registry)~~).

"Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other (~~(equivalent)~~) consensual security interest on a dwelling, as defined in the Truth in Lending Act, or residential real estate upon which is constructed or intended to be constructed a dwelling.

"Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include, but are not limited to, forbearances; repayment plans; changes in interest rates, loan terms (length), or loan types; capitalizations of arrearages; or principal reductions.

"Residential mortgage loan modification services." See WAC (~~(208-620-045)~~) 208-620-011.

"S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 ("HERA"), Public Law No. 110-289, effective July 30, 2008; and Regulation G, 12 C.F.R. Part 1007; and Regulation H, 12 C.F.R. Part 1008.

"Senior officer" means an officer of a consumer loan company at the vice-president level or above.

"Service or servicing a loan." See WAC 208-620-011.

"Simple interest method." (~~(means the method of computing interest payable on a loan by applying the rate of interest specified in the note, or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. For nonresidential mortgage loans, each payment must first be applied to any unpaid penalties, fees, or charges, then to accumulated interest, and last to the unpaid balance of the principal amount until paid in full. In using such method, interest must not be payable in advance or compounded. For residential mortgage loans, each payment must be applied as directed in the loan documents)~~) See WAC 208-620-011.

"State" means the state of Washington.

"Subsidiary" means a person that is controlled by another.

"Table funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

"Telemarketing and Consumer Fraud and Abuse Act" means the Telemarketing and Consumer Fraud and Abuse Act, 15 U.S.C. ((§)) Sec. 6101 to 6108.

"((Telephone)) Telemarketing Sales Rule" means the rules promulgated in 16 C.F.R. Part 310.

"Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.

"Third-party service provider" means any person other than the licensee who provides goods or services to the licensee in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

"Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. ((Sections)) Secs. 1601 et seq., and Regulation Z, 12 C.F.R. Part 1026 ((~~formerly 12 C.F.R. Part 226~~)).

"Unique identifier" means a number or other identifier assigned by protocols established by the NMLS.

"Underwriter." See WAC 208-620-011.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-011 How does the department interpret certain definitions in RCW 31.04.015((~~28~~))? "Borrower" means an individual who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan or a residential mortgage loan modification, regardless of whether the individual actually obtains a loan or residential mortgage loan modification.

"Loan processor" or "underwriter" means an individual who performs clerical or support duties as an employee (not as an independent contractor) of a person licensed or exempt from licensing and at the direction of and subject to the supervision and instruction of an individual licensed, or exempt from licensing, under this chapter. A residential mortgage loan processor or underwriter engaged as an independent contractor by a licensee must hold a mortgage loan originator license.

"Residential mortgage loan modification services" means activities conducted for compensation or gain by ((~~individuals or entities~~)) persons not engaged in servicing the borrower's existing residential mortgage loan. The activities may include negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform residential mortgage loan modification services. The activities may also include the collection of data for submission to another ((~~entity~~)) person performing mortgage loan modification services or to a residential mortgage loan servicer.

"Service" or "servicing a loan" means, with respect to residential mortgage loans:

(a) Collecting or attempting to collect payments on existing obligations due and owing to the lender or investor, including payments of principal, interest, escrow amounts, and other amounts due;

(b) Collecting fees due to the servicer for the servicing activities;

(c) Working with the borrower to collect data and make decisions necessary to modify certain terms of those obligations either temporarily or permanently; or

(d) Otherwise finalizing collection through the foreclosure process.

"Simple interest method" means the method of computing interest payable on a loan by applying the rate of interest specified in the note or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. Interest may not be compounded or payable in advance.

~~(a) ((For nonresidential mortgage loans, each payment must first be applied to any unpaid penalties, fees, or charges, then to accumulated interest, and last to the unpaid balance of the principal amount until paid in full. Interest must not be payable in advance.~~

~~(b) For residential mortgage loans,))~~ Each payment must be applied as directed in the loan documents. No more than forty-five days of prepaid interest may be collected at the time of the loan closing.

~~((e))~~ (b) The prohibition on compounding interest does not apply to reverse mortgage loans made in compliance with the Washington State Reverse Mortgage Act within this chapter.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-104 Who is exempt from licensing as a consumer loan company? (1) See RCW 31.04.025 (2)(a), (b), (d), ~~((f))~~ (g) through ~~((h))~~ (i), and ~~((j))~~ (k) through ~~((l))~~ (m).

(2) Under RCW 31.04.025 (2)(c), entities conducting transactions under chapter 63.14 RCW (Retail installment sales of goods and services); however, the entity is not exempt if the transactions are an extension of credit to purchase merchandise certificates, coupons, open or closed loop stored value, or any other item issued and redeemable by a retail seller other than the entity extending the credit.

(3) Under RCW 31.04.025 (2)(e), any person making a loan primarily for business, commercial, or agricultural purposes unless the loan is secured by a lien on the borrower's primary ~~((residence))~~ dwelling.

(4) Under RCW 31.04.025 (2)(f), a person selling property they own, that does not contain a dwelling, when the property serves as security for the financing. The exemption is not available to individuals subject to the federal S.A.F.E. Act or any person in the business of constructing or acting as a contractor for the construction of residential dwellings. See also WAC 208-620-232.

(5) Under RCW 31.04.025 (2)((i)) (j), a nonprofit housing organization seeking exemption must meet the following standards:

(a) Has the status of a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986;

(b) Promotes affordable housing or provides home ownership education, or similar services;

(c) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;

(d) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;

(e) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients;

(f) Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs; and

(g) Meets other standards as prescribed by the director.

(6) Under RCW 31.04.025(3), individuals who make loans or extend credit, secured or unsecured, to immediate family members.

(7) Under RCW 31.04.025(3), individuals who extend credit on the sale of their primary dwelling.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-105 Who is exempt from licensing as a mortgage loan originator under this act? The following are exempt from licensing as a mortgage loan originator:

(1) Registered mortgage loan originators or any individual required to be registered while employed by a covered financial institution as defined in regulation G, 12 C.F.R. Sec. 1007.102;

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence;

(4) A Washington licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;

(5) Individuals who do not take residential mortgage loan applications or negotiate the terms of residential mortgage loans for compensation or gain or in the expectation of compensation or gain; and

(6)(a) An employee of a bona fide nonprofit organization who acts as a loan originator only with respect to his or her work duties to the bona fide nonprofit organization, and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower.

(b) Terms favorable to the borrower are terms consistent with loan origination in a public or charitable context, rather than a commercial context.

(7) Individuals employed by a licensed residential mortgage loan servicing company engaging in activities related to servicing, unless licensing is required by federal law or regulation.

(8) See also WAC 208-620-232.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-231 ~~((Which companies))~~ **Who must have a consumer loan license to service residential mortgage loans secured by Washington residential real estate or obligating Washington residents?** (1) ~~((Companies))~~ Persons servicing loans they originated.

(2) ~~((Companies))~~ Persons servicing loans purchased post closing.

(3) ~~((Companies))~~ Persons servicing loans owned by other ~~((companies))~~ persons.

(4) You must comply with the annual assessment requirements for your residential mortgage loan servicing activity. See WAC 208-620-440.

(5) See also WAC ~~((208-620-106))~~ 208-620-104.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-232 **Can I make a small number of residential mortgage loans without being licensed at the company level?** Pursuant to RCW 31.04.025(3) you may be eligible to make five or fewer residential mortgage loans during a calendar year without holding a company level license if you are not subject to licensing as a mortgage loan originator. See WAC 208-620-105. If you are eligible for the license waiver you must comply with ~~((the following))~~ certain conditions including the following:

(1) If you do not provide the borrower with a compliant federal disclosure of the loan terms and conditions and cost of financing you must provide the buyer with a disclosure prescribed by the director.

(2) You must comply with the state's usury rate limit. See chapter 19.52 RCW.

(3) You must follow Washington law if you pursue a foreclosure.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-234 **Must a company that provides loan processing or underwriting services on residential mortgage loans be licensed under the Consumer Loan Act?** Yes. (1) The company must license at the company level and must employ at least one licensed mortgage loan originator. Loan processors and underwriters are subject to the individual licensing requirements of the S.A.F.E. Act, 12 C.F.R. Part 1008 (Regulation H) if not supervised by an individual licensed as a mortgage loan originator under S.A.F.E. A company level license is required to provide the sponsorship for the supervising licensed mortgage loan originator.

(2) Alternatively, the company may license under the Mortgage Broker Practices Act, chapter 19.146 RCW.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-240 Once I am licensed, does the act apply to all loans I broker or make? Yes. All loans you broker or make to Washington residents, secured and unsecured, are subject to the authority and restrictions of the act including the provisions relating to the calculation of the annual assessment.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-271 Do I need a license to assist a ~~((borrower))~~ homeowner with a residential mortgage loan modification? Yes. Persons providing third-party loan modification services for compensation or gain must be licensed under this chapter, or under chapter 19.146 RCW. See also WAC ~~((208-620-550))~~ 208-620-552 and 208-620-568.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-300 If I want to operate my business from more than one office, do I have to license each location? Yes. You must submit a branch office application through the NMLS for each branch office, residential mortgage loan servicing location, or direct solicitation location. You must provide evidence of surety bond coverage for each branch and meet all other license requirements. ~~((See also WAC 208-620-252))~~ You may not operate until a license is granted for that location.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-301 If I make residential mortgage loans and employ managers, must they license individually as mortgage loan originators? Your managers, including branch managers, must license individually as mortgage loan originators if they conduct the following activities:

(1) Take residential mortgage loan applications, negotiate the terms or conditions of residential mortgage loans, or hold themselves out as being able to conduct these activities;

(2) Supervise your loan processor or underwriting employees; or

(3) Supervise your licensed mortgage loan originators.

(4) Specifically:

(a) Any manager or any person who takes a residential mortgage loan application in Washington, negotiates the terms or conditions of a residential mortgage loan on Washington property, or holds themselves out as being able to conduct those activities, must have a

Washington mortgage loan originator license. Washington licensed loan originators must work from a licensed location.

(b) Any manager who directly supervises loan processor or underwriting employees must hold a mortgage loan originator license. The loan originator license can be from any state. Washington licensed loan originators must work from a licensed location.

(c) Any manager who directly supervises Washington licensed mortgage loan originators must themselves hold a Washington loan originator license. Washington licensed loan originators must work from a licensed location.

(5) As to subsections (2) and (3) of this section licensure is for the day-to-day operational supervisors.

(6) Supervisory plans must be written. The details of the plan and how it is implemented must include consideration of the location of the supervisor and employees supervised, the number of employees supervised, and the volume of work performed by the supervised employees. Supervisory plans must be maintained as part of the business books and records.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-310 Is it necessary to license an office that is only providing underwriting and other back-office services? A location that is solely providing loan processing or underwriting or other back-office services on Washington loans and has only incidental contact with the borrower after an application has been taken, is not required to be licensed. Back office services do not include loan servicing. However, any location where a licensed mortgage loan originator works must be licensed. Also, your company's main office (headquarters), wherever located, must be licensed.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-328 How often must I report my loan origination and residential mortgage loan servicing volume? You must report your loan origination and residential mortgage loan servicing volume as directed and on the form prescribed ((each year during the annual assessment period)) by the director.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-371 May I employ someone to work with Washington residents or Washington property who has been convicted of a gross misdemeanor or felony, or who has had a lending-related license revoked or suspended? No. (1) Pursuant to RCW 31.04.093(6), the direc-

tor may prohibit any officer, principal, or employee from participating in the affairs of any licensee if that officer, principal, or employee has been convicted of or pled guilty or nolo ~~((contendere [contendere]))~~ contendere to:

(a) A gross misdemeanor involving dishonesty or financial misconduct; or

(b) A felony in a domestic, foreign, or military court:

~~((a))~~ (i) During the seven-year period preceding the date of the proposed employment; or

~~((b))~~ (ii) At any time preceding the date of the proposed employment, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

(2) For purposes of this section, "~~((participation))~~ participating in the affairs of any licensee" means an officer, principal, or employee or independent contractor who will or does originate loans, supervise employees or independent contractors, or manage the loan production or other activities of the licensee.

(3) Additionally, the director may prohibit participation in the affairs of the licensee by any officer, principal, or employee or independent contractor, or person subject to the act, who has had a license to engage in lending, or performance of a settlement service related to lending, including loan modifications, revoked or suspended in this state or any state.

(4) The department considers it to be a deceptive practice in violation of RCW 31.04.027(2) for any licensee to employ an officer, principal, or employee or independent contractor to conduct any of the activities described in subsection (3) of this section without first conducting a background check.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-400 Can I share an office with another business?

(1) You may conduct your business in a licensed location in which other persons are engaged in business.

(2) If you originate residential mortgage loans, you must comply with RESPA ~~((+))~~, 12 C.F.R. Sec. 1024.14, including the required disclosures and prohibitions on referral fees if:

(a) The licensee has effective control over the person sharing space; or

(b) The person sharing space has effective control over the licensee; or

(c) The licensee and the person sharing space are under common control by a third person; or

(d) The licensee is a corporation related to another corporation as parent to subsidiary and one refers business incident to or a part of a real estate settlement service to the other.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-420 May I transact my company business in a name other than the name on my company license? (1) You may only transact business using the name on the license or as further described in this section.

(2) You may apply to the department to add a trade or doing business as (DBA) name to your main office license but you may not use the DBA alone to transact business. DBA names will only be attached to the main office license. Branch offices cannot have DBAs attached to the branch office license. The director may deny an application for a proposed DBA name if the proposed DBA name is similar to a currently existing licensee name.

(3) If you transact business using a DBA you must use either the main office license number or main office ((license)) name as entered in the NMLS with the DBA. See also WAC 208-620-620, 208-620-621 and 208-620-622.

(4) Reserved.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-490 What are my reporting responsibilities when something of significance happens to my business? (1) **Prior notification required.** You must amend your NMLS record at least ten days prior to a change of your:

(a) Principal place of business or any of branch offices;

(b) Name or legal status (e.g., from sole proprietor to corporation, etc.);

(c) Name and mailing address of your registered agent if you are located outside the state;

(d) Legal or trade name; or

(e) ((A change of)) Ownership control of ten percent or more; or

(f) A closure or surrender of the license. See WAC 208-620-499.

(2) **Post notification within ten days.** You must amend your NMLS record within ten days after an occurrence of any of the following:

(a) A change in mailing address, telephone number, fax number, or e-mail address;

(b) A cancellation or expiration of your Washington state business license;

(c) A change in standing with the state of Washington secretary of state, including the resignation or change of the registered agent;

(d) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340. See WAC 208-620-360;

(e) Receipt of notification of cancellation of your surety bond;

(f) Termination of sponsorship of loan originator; ((or))

(g) Receipt of notification of a claim against your bond;

(h) A change in primary company contact or primary consumer complaint contact; or

(i) A change in your response to a disclosure question within NMLS. You must upload the document that is the basis for your changed response.

(3) **Post notification within twenty days.** You must amend your NMLS record within twenty days after the occurrence of any of the following developments:

(a) Receipt of notification of license revocation procedures against your license in any state;

(b) The filing of a felony indictment or information related to lending or brokering activities against you or any officer, board director, or principal or an indictment or information involving dishonesty against you or any officer, board director, or principal;

(c) Conviction of you or any officer, director, or principal for a felony, or a gross misdemeanor involving lending, brokering or financial misconduct; or

(d) The filing of any material litigation against the company.

(4) See WAC 208-620-499 for the requirements when you close your business.

(5) Within forty-five days of a data breach you must notify the director in writing. This notification requirement may change based on directives or recommendations from law enforcement. See also WAC 208-620-573.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-505 In addition to the Consumer Loan Act, what other laws do I have to comply with? You must ensure you are in compliance with all federal and state laws ~~((and))~~, regulations and programs that apply to lending or brokering loans ~~((when applicable to the transaction))~~, or servicing residential mortgage loans, including applicable reverse mortgage including, but not limited to, the Truth in Lending Act, the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, the Bank Secrecy Act, the Real Estate Settlement Procedures Act, the Gramm-Leach-Bliley Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, the Federal Trade Commission Act, the Telemarketing and Consumer Fraud and Abuse Act, the Washington State Fair Housing Act, the S.A.F.E. Act, ~~((and))~~ the Federal Trade Commission Telemarketing Sales Rule, and the Mortgage Acts and Practices - Advertising statute, Regulation N, 12 C.F.R. Part 1014.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-510 What are my disclosure obligations to consumers? Some types of loans may not be covered by the integrated TILA-RESPA rule. Examples include: Reverse mortgages and HELOCS. Creditors originating these types of mortgages must continue to use, as applicable, the federal Good Faith Estimate, HUD-1, and Truth in Lending disclosures. Creditors are not prohibited from using the integrated TILA-RESPA disclosures. However, they cannot replace the required federal Good Faith Estimate, HUD-1, and Truth in Lending disclosures.

(1) **Content requirements.** In addition to complying with the applicable disclosure requirements in the federal and state statutes re-

ferred to in WAC 208-620-505 if the loan will be secured by a lien on real property, you must also provide the borrower or potential borrower an estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty within three business days of receipt of a loan application.

(2) **Proof of delivery.** The licensee must be able to prove that the disclosures under subsection (1) of this section were provided within the required time frames. For purposes of determining the timeliness of the required early disclosures, the department may use the date of the credit report or may use the date of an application received from a broker. In most cases, proof of mailing is sufficient evidence of delivery. If the licensee has an established system of disclosure tracking that includes a disclosure and correspondence log, checklists, and a reasonable system for determining if a borrower did receive the documents, the licensee will be presumed to be in compliance.

(3) **Residential mortgage loans—Rate locks.** Within three business days(~~((, including Saturdays,))~~) of receipt of a residential mortgage loan application you must provide the borrower with the following disclosure about the interest rate:

(a) If a rate lock agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change. Compliance with the ((RESPA)) federal good faith estimate or loan estimate is considered compliance.

(b) If a rate lock agreement has been entered into, you must disclose to the borrower whether the rate lock agreement is guaranteed and if so, if guaranteed by a company other than your company, you must provide the name of that company, whether and under what conditions any rate lock fees are refundable to the borrower, and:

(i) The number of days in the rate lock period;

(ii) The date of the rate lock and expiration date of the rate lock;

(iii) The rate of interest locked;

(iv) ~~((If applicable, the index and a brief explanation of the type of index used, the margin, the maximum interest rate, and the date of the first interest rate adjustment; and~~

~~(v)) Any other terms and conditions of the rate lock agreement; and~~

(v) The date the rate lock agreement was provided to the borrower.

(c) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock agreement within three business days of the rate lock date that includes the items from (b) of this subsection.

(d) Prior to closing, you must disclose payment of a rate lock ((fee)) as a cost in Block 2 of the ((GFE. On the HUD-1, the cost of the rate lock must be recorded on Line 802 and the credit must be recorded in section 204-209)) federal good faith estimate or in "Loan Cost" on the loan estimate. At closing, you must disclose payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure.

(e) You may rely on a broker's rate lock agreement if it complies with this subsection.

(4) **Residential mortgage loans—Loans brokered to other creditors.** Within three business days following receipt of a residential

mortgage loan application you must provide to each borrower or potential borrower:

(a) If a rate lock agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change. Compliance with the ~~((RESPA))~~ federal good faith estimate ~~((is in))~~ or loan estimate is considered compliance with ~~((subsection (3)(a) of))~~ this subsection;

(b) An estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty;

(c) A good faith estimate or loan estimate that conforms with RESPA, Regulation X, 12 C.F.R. Part 1024 and TILA, Regulation Z, 12 C.F.R. Part 1016;

~~(d) ((A truth in lending disclosure that conforms with TILA, Regulation Z, 12 C.F.R. 1026;~~

~~((e)))~~ A rate lock disclosure containing the following:

(i) If a rate lock agreement has been entered into, you must disclose to the borrower whether the rate lock agreement is guaranteed and if so, the name of the company providing the guarantee, whether and under what conditions any rate lock fees are refundable to the borrower, and:

(A) The number of days in the rate lock period;

(B) The date of the rate lock and the expiration date of the rate lock;

(C) The rate of interest locked;

~~(D) ((If applicable, the index and a brief explanation of the type of index used, the margin, the maximum interest rate, and the date of the first interest rate adjustment))~~ The date the rate lock was provided to the borrower; and

(E) Any other terms and conditions of the rate lock agreement.

(ii) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock agreement within three business days of the rate lock date. The rate lock agreement must include the items from ~~((e)))~~ (d) of this subsection.

~~((f)))~~ (e) Prior to closing, you must disclose payment of a rate lock ((fee)) as a cost in Block 2 of the ((GFE. On the HUD-1, the cost of the rate lock must be recorded on Line 802 and the credit must be recorded in section 204-209)) federal good faith estimate or in "Loan Cost" on the loan estimate. At closing, you must disclose payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure.

(f) You may rely on a lender's rate lock agreement if it is in compliance with this subsection.

(5) Residential mortgage loans—Shared appreciation mortgages (SAM) or mortgages with shared appreciation provisions. Within three business days following receipt of a loan application for a shared appreciation mortgage, or a mortgage with a shared appreciation provision, in addition to the disclosures required by federal law or by this chapter, you must provide each borrower with a written disclosure containing at a minimum the following:

(a) The percentage of shared equity or shared appreciation you will receive (or a formula for determining it);

(b) The value the borrower will receive for sharing his or her equity or appreciation;

(c) The conditions that will trigger the borrower's duty to pay;

(d) The conditions that may cause the lender to terminate the mortgage or shared appreciation provision early;

(e) The procedure for including qualifying major home improvements in the home's basis (if any);

(f) Whether a prepayment penalty applies or other conditions applicable, if a borrower wishes to repay the loan early, including but not limited to, any date certain after which the borrower can repay the loan by paying back the lender's funds plus accrued equity; and

(g) The date on which the SAM terminates and the equity or appreciation becomes payable if no triggering event occurs.

(6) **Loan modifications.** You must immediately inform the borrower in writing if the owner of the loan requires additional information from the borrower, or if it becomes apparent that a residential mortgage loan modification is not possible.

(7) Each licensee must maintain in its files sufficient information to show compliance with state and federal law.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-511 What is the disclosure required under RCW 19.144.020 for residential mortgage loans? (1) You must provide the borrower with a clear, brief one page summary to help borrowers understand their loan terms. The disclosure summary must be provided on one page separate from any other documents and must use clear, simple, plain language terms that are reasonably understandable to the average person.

(2) You must provide the initial disclosure summary to the borrower within three business days following your receipt of a complete loan application.

(3) You must redisclose material loan terms within three days of a significant change, or at least three days before closing, whichever is earlier.

(4) You may provide the disclosure summary in electronic form, in a manner consistent with the procedure for delivery of electronic disclosure under Regulation Z of the Truth in Lending Act, 12 C.F.R. Part ((226)) 1026, currently in effect, which implements the E-Sign Act of 2000, 15 U.S.C. Sec. 7001 et seq.

(5) The department has developed model forms that comply with this provision. See the department's web site. See also RCW 19.144.020 and WAC 208-600-200.

(6) Disclosure in compliance with the Real Estate Settlement Procedures Act, ((12 U.S.C. Sec. 2601, and)) Regulation X, 12 C.F.R. ((1024.7 (formerly 24 C.F.R. Sec. 3500.7))) Part 1024 and Truth in Lending Act, Regulation Z, 12 C.F.R. Part 1026 is considered compliance with the disclosure requirements of this section.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-515 What authority do I have ((as a licensee)) after my license has been issued? ((As a licensee)) Once your license has been issued you may:

(1) Lend money with a note rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed. This applies only to nonmortgage loans, junior lien mortgage loans, and to lenders that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act when making first lien mortgage loans. The requirement for the simple interest method of calculating interest does not apply to reverse mortgages.

(2) Make open-end loans as authorized in RCW 31.04.115 provided that:

(a) The annual fee allowed in RCW 31.04.115(3) may not exceed fifty dollars; and

(b) The annual fee must be charged in advance as a lump sum. It must not be charged monthly and must not be financed.

(3) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, covering the involuntary unemployment of the borrower, or other insurance products approved by the Washington state office of the insurance commissioner.

(4) Service residential mortgage loans. See also WAC 208-620-320, 208-620-325, 208-620-550, 208-620-551, and 208-620-900.

(5) Provide third-party loan modification services for residential mortgage loans. See also WAC 208-620-320, 208-620-325, 208-620-545, 208-620-550, and 208-620-552.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-520 How long must I maintain my records under the Consumer Loan Act? What are the records I must maintain? Licensees must maintain the following records for a minimum of three years, or the period of time required by federal law whichever is longer, after making the final entry on a loan at a licensed location.

(1) **General records.** Each licensee must maintain ~~((the))~~ electronic or hard copy books, accounts, records, papers, documents, files, and other information relevant to ~~((a))~~ making loans or servicing ~~((of a))~~ residential mortgage loans ~~((for a minimum of three years, or the period of time required by federal law, whichever is longer, after making the final entry on that loan at a licensed location))~~.

(2) **Advertising records.** These records include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any electronic advertising distributed ~~((directly by delivery,))~~ by facsimile ~~((or))~~ computer, or other electronic or wireless network.

(3) **Other specific records.** The records required under subsection (1) of this section include, but are not limited to:

(a) All loan agreements or notes and all addendums, riders, or other documents that supplement the final loan agreements;

(b) All forms of loan applications, written or electronic (the Fannie Mae 1003 is an example);

(c) The initial rate sheet or other supporting rate information;

(d) The last rate sheet, or other supporting rate information, if there was a change in rates, terms, or conditions prior to settlement;

(e) Rate lock agreements and the supporting rate sheets or other rate supporting document;

(f) All written disclosures required by the act and federal laws and regulations. Some examples of federal law disclosures include, but are not limited to: The good faith estimate(~~((, truth in lending disclosures))~~) or loan estimate or other Truth in Lending Act disclosures, Equal Credit Opportunity Act disclosures, and affiliated business arrangement and other disclosures(~~((, and RESPA servicing disclosure statement))~~) under RESPA;

(g) Documents and records of compensation paid to employees and independent contractors;

(h) An accounting of all funds received in connection with loans with supporting data;

(i) Settlement statements (the final HUD-1 (~~((or))~~), HUD-1A or federal closing disclosure);

(j) Broker loan document requests (may also be known as loan document request or demand statements) that include any prepayment penalties, terms, fees, rates, yield spread premium, loan type and terms;

(k) Records of any fees refunded to applicants for loans that did not close;

(l) All file correspondence and logs;

(m) All mortgage broker contracts with lenders and all other correspondence with the lenders;

(n) All documents used to support the underwriting approval; and

(o) All documents that evidence a financial commitment made to protect a rate of interest during a rate lock period.

(4) Loan servicing documents. See subsection (1) of this section.

(5) Abandoned records. If you do not maintain your records as required, you are responsible for the costs of collection, storage, conversion to electronic format, or proper destruction of the records.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-531 Must I have a (~~((records disaster recovery and information security))~~) business resumption plan? Yes. You must have written policies and procedures in place that detail your response to any event that results in damage to or destruction (~~((to))~~) of your records. You must maintain the policies and procedures as part of your books and records.

NEW SECTION

WAC 208-620-532 Records disposal. Licensees must have written policies and procedures for the destruction of records, including electronic records, when the retention period ends. The destruction of records must be accomplished so that the information cannot be reconstructed or read. The destruction of consumer credit report information must also comply with the federal disposal rule at 16 C.F.R. Part 682.

WAC 208-620-550 What business practices are prohibited? In addition to RCW 31.04.027, the following constitute an "unfair or deceptive" act or practice:

(1) Failure to provide the exact pay-off amount as of a certain date within ((five)) seven business days after being requested in writing to do so by a borrower of record or their authorized representative;

(2) Failure to record a borrower's payment as received on the day it is delivered to any of the licensee's locations during its regular working hours;

(3) Collecting more than forty-five days of prepaid interest at the time of loan closing;

(4) Soliciting or entering into a contract with a borrower that provides in substance that the licensee may earn a fee or commission through its "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(5) **Engaging in unfair or deceptive advertising practices.** Unfair advertising may include advertising that offends public policy, or causes substantial injury to consumers or to competition in the marketplace. See also WAC 208-620-630;

(6) Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department;

(7) Making any payment, directly or indirectly, or withholding or threatening to withhold any payment, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(8) Leaving blanks on a document that is signed by the borrower or providing the borrower with documents with blanks;

(9) Failing to clearly disclose to a borrower whether the payment advertised or offered for a real estate loan includes amounts for taxes, insurance or other products sold to the borrower;

(10) Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower, unless mail has been previously returned as undeliverable from the address, in order to verify that the asset is not otherwise insured;

(11) Willfully filing a lien on property without a legal basis to do so;

(12) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction;

(13) Failing to reconvey title to collateral, if any, within thirty business days when the loan is paid in full unless conditions exist that make compliance unreasonable;

(14) Intentionally delaying the closing of a residential mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower;

(15) Steering a borrower to a residential mortgage loan with less favorable terms than they qualify for in order to increase the compensation paid to the company or mortgage loan originator. An example is counseling, or directing a borrower to accept a residential mortgage loan product with a risk grade less favorable than the risk grade the

borrower would qualify for based on the licensee or other regulated person's then current underwriting guidelines, prudently applied, considering the information available to the licensee or other regulated person, including the information provided by the borrower;

(16) Failing to indicate on all residential mortgage loan applications, initial and revised, the company's unique identifier, the loan originator's unique identifier, and the date the application was taken or revised;

(17) Receiving compensation or anything of value from any party for assisting in real estate "flopping." Flopping occurs during some short sales where the value of the property is misrepresented to the lender who then authorizes the sale of the property for less than market value. The property is then resold at market value or near market value for a profit. The failure to disclose the true value of the property to the lender constitutes fraud and is a violation of this chapter;

(18) Receiving compensation for making the loan and for brokering the loan in the same transaction.

(19) Charging a fee in a residential mortgage loan transaction that is more than the fees allowed by the state or federal agency overseeing the specific type of loan transaction. Examples include, but are not limited to, loans insured or guaranteed by the Veterans Administration, Home Equity Conversion Mortgages insured by HUD, and loans offered through the United States Department of Agriculture Rural Development.

(20) Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan. An example is advertising a discounted rate without clearly and conspicuously disclosing in the advertisement the cost of the discount to the borrower and that the rate is discounted.

(21) Servicing a usurious loan.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-555 What fees are allowed and when can they be collected from the borrower under the Consumer Loan Act? (1) Residential mortgage loans. This subsection does not apply to first lien residential mortgage loans originated by lenders who are creditors as defined in the Truth in Lending Act, 15 U.S.C. 1601 and Regulation Z, 12 C.F.R. 1026.

(a) Origination fees. You may charge a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.

(b) Brokering fees. When agreed to in writing by the borrower, a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee.

(c) Third-party fees. The only third-party fees you may collect from the borrower before a loan is closed is the actual cost of the credit report and appraisal ((fee)). You may collect from the borrower reimbursement for fees you actually and properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender. You must provide a copy of the appraisal to the borrower even if you do not receive reimbursement for the cost of the appraisal.

(2) Nonmortgage loans. You may charge a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.

(3) Third-party fees. This subsection applies to residential and nonresidential lending.

(a) When agreed to in writing by the borrower, you may collect from the borrower at closing reimbursement for fees you paid to third-party service providers who provided goods or services in connection with the preparation of the borrower's loan. Such third-party service providers include, but are not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies. The actual cost of such fees may be included in the amount of the loan.

(b) You must not charge or collect any fee to be paid to a third-party service provider, as defined in WAC 208-620-010, in excess of the actual costs paid or to be paid.

(c) You may use a borrower's credit card information for payment of the credit report or appraisal when paid directly to the third-party service provider.

(d) You may charge a nonrefundable rate lock fee when agreed to in writing by the borrower. The fee may be retained if the borrower breaks the rate lock agreement and you are making the loan, if you have paid a third party for the interest rate lock, or if you have otherwise made a financial commitment to protect the rate during the lock period. The fee may not be retained if the borrower rescinds the loan under Regulation Z, if the borrower does not qualify for a loan, or if the loan is denied based on the property appraisal. See also WAC 208-620-510(3).

~~((+e))~~ (4) Late payment penalties. ~~((Not))~~ You may not charge more than ten percent of any installment payment delinquent ten days or more.

~~((+f))~~ (5) Attorneys' fees. You may charge reasonable attorneys' fees, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclosure when a debt is referred for collection to an attorney who is not ((a)) your salaried employee ((of the licensee- (4))).

(6) The fees allowed in subsection (3)(d) of this section must be included in the loan origination fee calculations described in subsections (1) and (2) of this section.

(7) Discount points.

(a)(i) You must not collect a fee from the borrower for lowering the interest rate unless the interest rate is actually reduced.

(ii) You must be able to show a definitive mathematical relationship between discount points paid and the interest rate obtained via a

rate sheet or pricing engine that was in effect when the interest rate was locked.

(b) Any applicable program add-on fees must be disclosed as part of the discount points.

INFORMATION SECURITY

NEW SECTION

WAC 208-620-571 Information security program required by the federal Safeguards Rule implementing the Gramm-Leach-Bliley Act. (1) Generally, applicants and licensees must have a written program appropriate to the company's size and complexity, the activity conducted, and the sensitivity of information at issue. The program must ensure the information's security and confidentiality, protect against anticipated threats or hazards to the security or integrity of the information, and protect against unauthorized access to or use of the information.

(2) Specifically, at a minimum the plan described in subsection (1) of this section must:

(a) Designate an employee or employees to coordinate the information security program;

(b) Identify and assess the risks to customer information;

(c) Design and implement information safeguards to control the risks identified in the risk assessment and regularly monitor and test the safeguards;

(d) Select service providers that can maintain appropriate safeguards and oversee their handling of customer information; and

(e) At least annually evaluate and adjust the program in light of relevant circumstances, including changes in business or operations, or the results of testing and monitoring the effectiveness of the implemented safeguards.

(3) The information security plan must be maintained as part of your books and records.

(4) For more information access the FTC web site on the Safeguards Rule at: <https://www.ftc.gov/tips-advice/business-center/guidance/financial-institutions-customer-information-complying> and see 16 C.F.R. 314.

NEW SECTION

WAC 208-620-572 Consumer financial information privacy under the Gramm-Leach-Bliley Act (GLBA) and Regulation P. (1) Licensees must comply with GLBA, as amended, and Regulation P. Unless subject to an exception under GLBA, as amended, licensees must at a minimum:

(a) Provide customers with initial and annual notices regarding their privacy policies. These notices describe whether and how the licensee shares consumers' nonpublic personal information, including personally identifiable financial information, with other entities; and

(b) If licensees share certain customer information with particular types of third parties, the institutions are also required to provide notice to their customers and an opportunity to opt out of the sharing. If a licensee limits its types of sharing to those which do not trigger opt-out rights, it may provide a "simplified" annual privacy notice to its customers that does not include opt-out information. If a licensee's compliant privacy policy has not changed, additional notices may not be required.

(2) See GLBA, as amended, and Regulation P at 12 C.F.R. Part 1016 for the required details.

NEW SECTION

WAC 208-620-573 Notice to consumers of data breach. If the licensee's data is compromised, the licensee may be subject to chapter 19.255 RCW and may have to provide notices to consumers whose information was acquired. Under certain circumstances notice of the breach may also be required to the attorney general's office.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-580 As a licensee, will my business be subject to periodic examinations? (1) ((You)) Licensees can expect to be visited periodically by the department's examiners. The director or designee may examine, wherever located, the records used in the business of every licensee and of every person who is engaged in the consumer loan business, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter. For that purpose the director or designee shall have free access, at reasonable times during business hours, to the offices and places of business and all books and records of the business.

(2) When directed to do so during an examination ((you)) licensees must provide information on the characteristics of loan originations in a format prescribed by the director.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-590 How much will I be charged for my ((periodic)) examinations and when will the payment be due? (1) You will be charged \$69.01 per hour for ((regular and special)) examinations of your records.

(2) If the examination occurs outside of Washington, you will be charged the hourly rate plus travel costs.

(3) You must pay examination costs within thirty days after receiving the invoice to avoid having to pay accrued interest.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-610 What authority does the department have to investigate violations of the Consumer Loan Act? (1) The director may enforce all laws and rules relating to the licensing and regulation of licensees and persons subject to this chapter.

(2) The director may impose fines of up to one hundred dollars per day, per violation, upon the licensee, its employees or loan originators, or other persons subject to this chapter for any violation of this chapter or for failure to comply with any order or subpoena issued by the director under this chapter.

(3) Each day's continuance of the violation is a separate and distinct offense.

(4) **Testimony.** The director or designees may require the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or the subject matter of any investigation, examination, or hearing.

(5) **Production of records or copies.** The director or designee may require the production of books, accounts, papers, records, files, and any other information deemed relevant to the inquiry. The director may require the production of original books, accounts, papers, records, files, and other information; may require that such original books, accounts, papers, records, files, and other information be copied; or may make copies himself or herself or by designee of such original books, accounts, papers, records, files, or other information.

(6) **Subpoena authority.** If a licensee or person does not attend and testify, or does not produce the requested books, accounts, papers, records, files, or other information, then the director or designated persons may issue a subpoena or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, records, files, or other information.

(7) The director may collect an investigation fee. Licensees will be charged sixty-nine dollars and one cent per hour for the investigation.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-620 How do I have to identify my business when I advertise? You must identify the business using your Washington consumer loan ((license)) name as entered in the NMLS. You may also use an approved DBA name if you include the main office ((license)) name as entered in the NMLS and license number. For use of URL addresses and web pages, see WAC 208-620-621 and 208-620-622.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-621 May I advertise over the internet using a URL address that is not my licensed business name? Yes, provided that any URL address you advertise takes the user directly to your main or home web page. If you want the user to be directed to a different main or home web page, the URL address must contain your ((license)) name as entered in the NMLS in addition to any other names or words in the URL address. URL addresses may be used as DBA names upon request to and approval from DFI. See also WAC 208-620-620 and 208-620-622.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-622 When I advertise using the internet or any electronic form (including, but not limited to, text messages), is there specific content my web pages must contain? Yes. You must provide the following language, in addition to any other, on your web pages or in any medium where you hold yourself out as being able to provide the services:

(1) Main or home page.

(a) The company's ((license)) name as entered in the NMLS and NMLS unique identifier must be displayed on the licensee's main or home web page.

(b) If mortgage loan originators are named, their license numbers must closely follow the names.

(c) The main or home page must also contain a link to the NMLS consumer access web site page for the company.

(2) Branch office web page - No DBA. Comply with subsection (1) of this section.

(3) Main or branch office web page - DBA. If the company uses a DBA on a web page the web page must also contain the main office ((license)) name as entered in the NMLS, license number, be in compliance with subsection (1)(b) of this section, and the web page must contain a link to the NMLS consumer access web site page for the company.

(4) Mortgage loan originator web page. If a loan originator maintains a separate home or main page, the sponsoring licensee's name and license number must also appear on the web page. The web page must also contain the loan originator's ((license)) name as entered in the NMLS and license number closely following their name and a link to the NMLS consumer access web page for the company. An example of closely following is: Your ((license)) name as entered in the NMLS followed by your title (if you use one) followed by your license number. See the definition of license number for examples of ways to display your license number. See also WAC 208-620-710(26).

(5) Compliance with other laws. Web site content used to solicit Washington consumers must comply with all relevant state and federal statutes for specific services and products advertised on the web site.

(6) Oversight. The company is responsible for web site content displayed on all company web pages used to solicit Washington consumers including main, branch, and mortgage loan originator web pages.

WAC 208-620-630 What are some of the advertising restrictions I must comply with? (1) Licensees are prohibited from advertising with envelopes or stationery, or ((by)) using images in an electronic format, that ~~((contain an official-looking emblem))~~ are designed to resemble a government mailing or other method of communication that suggest an affiliation that does not exist. Some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws include, but are not limited to:

(a) Characterizing products as "government loan programs," "government-supported loans," or other words that may mislead a consumer into believing that the government is guaranteeing, endorsing, or supporting the advertised loan product. Using the words "FHA loan," "VA loan," or words for other products that are in fact endorsed or sponsored by a federal, state, or local government entity is allowed.

(b) An official-looking emblem such as an eagle, the Statue of Liberty, or a crest or seal that resembles one used by any state or federal government agency.

(c) Envelopes or electronic communications designed to resemble official government communications, such as IRS or U.S. Treasury envelopes, or other government mailers or electronic communications.

(d) Warnings or notices citing government codes or form numbers not required by the U.S. Postmaster to be shown on the communication.

(e) The use of the term "official business," or similar language implying official or government business, without also including the name of the sender.

(f) Any suggestion or representation that the licensee is, or is affiliated with, a state or federal agency, municipality, bank, savings bank, trust company, savings and loan association, building and loan association, credit union, or other entity that it does not actually represent.

(2) When I am advertising interest rates, the act requires me to conspicuously disclose the annual percentage rate (APR) implied by the rate of interest. What does it mean to "conspicuously" disclose the APR? The required disclosures in your advertisement must be reasonably understandable. Consumers must be able to see, read, or hear, and understand the information. Many factors, including the size, duration, and location of the required disclosures, and the background or other information in the advertisement, can affect whether the information is clear and conspicuous. This requirement applies to all mandatory disclosures. The presentation of the disclosure of the APR must be at least equivalent to the presentation of any other rates disclosed in the advertisement.

(3) The act prohibits me from advertising an interest rate unless that rate is actually available at the time of the advertisement. How may I establish that an advertised interest rate was "actually available" at the time it was advertised? Whenever a specific interest rate is advertised, the licensee must retain a copy of supporting rate information, and the APR calculation for the advertised interest rate.

(4) Must I quote the annual percentage rate when discussing rates with a borrower? Yes. You must quote the annual percentage rate and other terms of the loan if you give an oral quote of an interest rate

to the borrower. TILA's Regulation Z, 12 C.F.R., Part 226.26 provides guidance for using the annual percentage rate in oral disclosures.

(5) **May a licensee advertise rates or fees as the "lowest" or "best"?** No. Rates described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised. Therefore, they are a false or deceptive statement or representation prohibited by RCW 31.04.027.

(6) **May I solicit using advertising that suggests or represents that I am affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, when I am not; or that I am an entity other than who I am?** No. It is an unfair and deceptive act or practice and a violation of the act for you to suggest or represent that you are affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, or other entity you do not actually represent; or to suggest or represent that you are any entity other than who you are.

(7) **If I advertise using a borrower's current loan information, what must I disclose about that information?** When an advertisement includes information about a borrower's current loan that you did not obtain from a solicitation, application, or loan, you must provide the borrower with the name of the source of the information.

(8) **Is it a violation to advertise that third-party services are "free" when the licensee has paid for the services?** Yes. Advertising using the term "free," or any other similar term or phrase that implies there is no cost to the applicant is deceptive because you can recover the cost of the purportedly "free" item through the negotiation process. This is a violation of RCW 31.04.027 (2), (7), and (12). See the Federal Trade Commission's *Guide Concerning Use of the Word "Free" and Similar Representations*, available at <http://www.ftc.gov/bcp/guides/free.htm>, 16 C.F.R. ((§)) Sec. 251.1(g) (2003).

(9) **How can I advertise a discounted rate?** You must clearly and conspicuously disclose in the advertisement at a minimum, the cost of the discount to the borrower and that the rate is discounted. Not including that information is a violation of RCW 31.04.027(7).

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-640 What are some of the federal laws I must comply with when I advertise any loan subject to the Consumer Loan Act? You must comply with all the applicable advertising requirements under the federal statutes and regulations including, but not limited to, the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Federal Trade Commission Act, the Telemarketing and Consumer Fraud and Abuse Act, Mortgage Acts and Practices - Advertising statute, Regulation N, 12 C.F.R. Part 1014, and the Equal Credit Opportunity Act.

WAC 208-620-710 Mortgage loan originator—Licensing. (1) **Must I have a license to act as a mortgage loan originator for a consumer loan company?** Yes. You must not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under this act. You must register with and maintain a valid unique identifier issued by the NMLS.

(2) **How do I apply for a mortgage loan originator license?** Your application consists of filing an online application through the NMLS and providing Washington specific requirements directly to DFI. You must pay an application fee and filing fee through the NMLS. In addition to supplying the application information, both you and the company intending to sponsor you must be in good standing with the department.

(3) **What are the eligibility requirements to become a licensed mortgage loan originator?**

(a) **Be eighteen years or older.**

(b) **Demonstrate financial responsibility.** For the purposes of this section, an applicant has not demonstrated financial responsibility when the applicant shows disregard in the management of his or her financial condition. A determination that an individual has shown disregard in the management of his or her financial condition may include, but is not limited to, an assessment of: Your credit report, current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or judgments or other government liens or filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years. Specifically, you are not eligible to receive a loan originator license if you have one hundred thousand dollars or more of tax liens against you at the time of application.

(c) **Pass a licensing test.** You must take and pass the NMLS test that assesses your knowledge of the mortgage business and related regulations at the federal and state level. See WAC 208-620-725.

(d) **Complete prelicensing education.** You must complete prelicensing education before submitting an application. See WAC 208-620-720.

(e) **Prove your identity.** You must provide information to prove your identity.

(f) **Provide a bond.**

(i) If you are employed by a company that is exempt from licensing, or uses a bond substitute, you must obtain and maintain an individual bond based on the volume of your mortgage loan origination activity. By March 1st of each year, you must determine your required bond amount and provide DFI with proof of having an adequate bond. The bond must be in the following amount:

1. Zero to twenty million in loans originated:	\$20,000
2. Twenty million to thirty million:	\$30,000
3. Thirty million to forty million:	\$40,000
4. Forty million and above:	\$50,000

(ii) If you are employed by a company that is exempt and is a nonprofit housing organization making loans under housing programs that are funded in whole or in part by federal or state programs with

the primary purpose of assisting low-income borrowers with purchasing or repairing housing or for the development of housing for low-income Washington state residents, the bond must be in the following amounts:

1. Zero to fifty million in loans originated: \$10,000
2. Fifty +: \$20,000

(g) **File a quarterly call report.** Reserved.

(4) **In addition to reviewing my application, what else will the department consider to determine if I qualify for a mortgage loan originator license?**

(a) **General fitness and prior compliance actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken against you, or any person you were responsible for, in this state, or any jurisdiction.

(b) **License suspensions or revocations.** You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules, or have had a license issued under the act or any similar state statute suspended or revoked.

(c) **Criminal history.** You are not eligible for a loan originator license if you have been convicted of a gross misdemeanor involving dishonesty or financial misconduct or has not been convicted of, or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court:

(i) During the seven-year period preceding the date of the application for licensing and registration; or

(ii) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

(5) **What will happen if my loan originator license application is incomplete?** After submitting your online application through the NMLS and filing the required information and documentation with the department, the department will notify you of any application deficiencies.

(6) **How do I withdraw my application for a loan originator license?**

(a) Once you have submitted the online application through NMLS you may withdraw the application through NMLS. You will not receive a refund of the NMLS filing fee or the amount the department uses to investigate your license application.

(b) The withdrawal of your license application will not affect any license suspension or revocation proceedings in progress at the time you withdraw your application through the NMLS.

(7) **When will the department consider my loan originator license application to be abandoned?** If you do not respond within fifteen days and as directed by the department, your loan originator license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

(8) **What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied?** See WAC 208-620-615.

(9) **May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else?** No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

(10) **How do I change information on my loan originator license?** You must submit an amendment to your license through the NMLS. You may be charged a fee.

(11) **What is an inactive loan originator license?** When a licensed loan originator is not sponsored by a licensed or exempt entity, the license is inactive. When a person holds an inactive license, they may not conduct any of the activities of a loan originator, or hold themselves out as a licensed loan originator.

(12) **When my loan originator license is inactive, am I subject to the director's enforcement authority?** Yes. Your license is granted under specific authority of the director and under certain situations you may be subject to the director's authority even if you are not doing any activity covered by the act.

(13) **When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year?** Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.

(14) **May I originate loans from a web site when my license is inactive?** No. You may not originate loans, or engage in any activity that requires a license under the act, while your license is inactive.

(15) **How do I activate my loan originator license?** The sponsoring company must submit a sponsorship request for your license through the NMLS. The department will notify you and the sponsoring company if approved.

(16) **When may the department issue interim loan originator licenses?** To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date. The license applicant must meet the minimum requirements to obtain a license under the S.A.F.E. Act to receive an interim license.

(17) **When does my loan originator license expire?** The loan originator license expires annually on December 31st. If the license is an interim license, it may expire in less than one year.

(18) **How do I renew my loan originator license?**

(a) Before the license expiration date you must renew your license through the NMLS. Renewal consists of:

(i) Paying the annual assessment fee; and

(ii) Meeting the continuing education requirement. You will not have a continuing education requirement in the year in which you complete the core twenty hours of prelicensing education. See WAC 208-620-730.

(b) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

(19) **If I let my loan originator license expire, must I apply to get a new license?** If you complete all the requirements for renewal on or before the last day of February each year, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (17) of this section for the license renewal requirements.

During this two-month period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or department "date received" stamp by March 1st. If you fail to comply with the renewal request requirements you must apply for a new license.

(20) If I let my loan originator license expire and then apply for a new loan originator license must I comply with the continuing education requirements from the prior license period? Yes. Before the department will consider your new loan originator application complete, you must provide proof of satisfying the continuing education requirements from the prior license period.

(21) May I still originate loans if my loan originator license has expired? No. Once your license has expired you may no longer conduct the business of a loan originator, or hold yourself out as a licensed loan originator, as defined in the act and these rules.

(22) May I surrender my loan originator's license? Yes. Only you may surrender your license before the license expires through the NMLS.

Surrendering your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omissions occurring before the license surrender.

(23) Must I display my loan originator license where I work as a loan originator? No. Neither you nor the company is required to display your loan originator license. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

(24) Must I include my loan originator license number on any documents? You must include your license number closely following your ((license)) name as entered in the NMLS on (a) through (d) of this subsection. An example of closely following is: Your ((license)) name as entered in the NMLS followed by your title (if you use one) followed by your license number.

(a) Solicitations. This includes correspondence in any form. Correspondence that this not a solicitation does not have to include your license number.

(b) Business cards.

(c) All advertisements and marketing that contain your ((license)) name as entered in the NMLS.

(d) Any state or federal form that requires your license number. See WAC 208-620-710(26).

(25) When must I disclose my loan originator license number? In the following situations you must disclose your loan originator license number and the name and license number of the company you are associated with:

(a) When asked by any party to a loan transaction, including third-party providers;

(b) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(c) When asked by any person who contacts you about a residential mortgage loan;

(d) When taking a residential mortgage loan application.

(26) May I conduct business and advertise under a name other than the name on my loan originator license? You must use the name on your license when you are conducting business and in your advertisements with the following exceptions:

Except, use of your middle name is not required. Except, you may use only your middle and last name. Except, you may use a nickname as your first name if it is registered in NMLS on your MU4 as an "other" name.

(27) **As a licensed mortgage loan originator, what are my reporting responsibilities?** You must notify the director through amendment to the NMLS within ten business days to a change of:

- (a) Answers to the NMLS generated disclosure questions;
- (b) Sponsorship status;
- (c) Residence address; ~~((or))~~
- (d) Any change in the information supplied to the director in your original application; or
- (e) A change to your response to a disclosure question within NMLS. You must upload any document that is the basis for your changed response.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-800 What definitions are applicable to ~~((this section))~~ proprietary reverse mortgage products under the act? (1) Advance. A payment from the lender to the borrower.

(2) "FHA-approved reverse mortgage" means a "home equity conversion mortgage" or other reverse mortgage product guaranteed or insured by the federal department of Housing and Urban Development.

(3) "Owner-occupied residence" is the borrower's residence and includes a life estate property the legal title for which is held in the name of the borrower in a reverse mortgage transaction or in the name of a trust, provided the occupant of the property is the beneficiary of that trust.

(4) "Proprietary reverse mortgage loan" is any reverse mortgage loan product that is not a home equity conversion mortgage loan or other federally guaranteed or insured loan.

(5) "Reverse mortgage broker or lender" means a licensee under the Washington state Consumer Loan Act, chapter 31.04 RCW, or a person exempt from licensing pursuant to federal law.

(6) "Reverse mortgage loan" means a nonrecourse consumer credit obligation in which:

(a) A mortgage, deed of trust, or equivalent consensual security interest is created in the borrower's dwelling securing one or more advances;

(b) Any principal, interest, or shared appreciation or equity is due and payable, other than in the case of default, only after:

- (i) The consumer dies;
 - (ii) The dwelling is transferred; or
 - (iii) The consumer ceases to occupy the dwelling as a dwelling;
- and

(c) The broker or lender is licensed under Washington state law or exempt from licensing under federal law.

WAC 208-620-820 What specific loan terms and conditions are allowed or required in the proprietary reverse mortgages I make to Washington residents? (1) Loan prepayment.

(a) Prepayment, in whole or in part, or the refinancing of a reverse mortgage loan, must be permitted without penalty at any time during the term of the reverse mortgage loan. For the purposes of this subsection, penalty means an amount of money charged to the borrower in addition to any fees, payments, or other charges, not including interest, that would have otherwise been due upon the reverse mortgage being due and payable. However, when a reverse mortgage lender has paid or waived all of the usual fees or costs associated with a reverse mortgage loan, a prepayment penalty may be imposed, provided the penalty does not exceed the total amount of the usual fees or costs that were initially absorbed or waived by the reverse mortgage lender.

(b) You may not impose a prepayment penalty under this subsection if the prepayment is caused by the occurrence of the death of the borrower.

(c) If a prepayment penalty is imposed under the circumstances described in (a) of this subsection you must disclose the prepayment penalty to the borrower.

(2) Interest rate. A reverse mortgage loan may provide for a fixed or adjustable interest rate or combination thereof, including compound interest, and may also provide for interest that is contingent on the value of the property upon execution of the loan or at maturity, or on changes in value between closing and maturity.

(3) Late advances. A late advance is a scheduled monthly advance that you do not mail or electronically transfer to the borrower on or before the first business day of the month, or within five business days of the date you receive the borrower's request, or such other regularly scheduled contractual date.

(a) If you make a late advance you must pay a late charge of ten percent of the entire amount that should have been advanced to the borrower.

(b) For each additional day you fail to make the advance, you must pay interest on the late advance at the interest rate stated in the loan documents. If the loan documents provide for an adjustable interest rate, the rate in effect when the late charge first accrues is used. You must pay late charges from your funds and they may not be added to the unpaid principal balance of the borrower's loan or in any other way collected from the borrower.

(c) You forfeit the right to interest and monthly servicing fees for any months you fail to make a timely advance.

(4) Loan acceleration. The reverse mortgage loan may become due and payable upon the occurrence of any one of the following events:

(a) The home securing the loan is sold or title to the home is otherwise transferred;

(b) All borrowers cease occupying the home as a principal residence, except as provided in subsection (5) of this section; or

(c) A defaulting event occurs which is specified in the loan documents.

(5) Repayment. Repayment of the reverse mortgage loan is subject to the following additional conditions:

(a) Temporary absences from the home not exceeding one hundred eighty consecutive days do not cause the mortgage to become due and payable;

(b) Extended absences from the home exceeding one hundred eighty consecutive days, but less than one year, do not cause the mortgage to become due and payable if the borrower has taken prior action that secures and protects the home in a satisfactory manner, as specified in the loan documents;

(c) Your right to collect reverse mortgage loan proceeds is subject to the applicable statute of limitations for written loan contracts. Notwithstanding any other provision of law, the statute of limitations commences on the date that the reverse mortgage loan becomes due and payable as provided in the loan agreement;

(d) If the borrower mortgaged one hundred percent of the full value of the house, the amount owed will be the lesser amount of:

(i) The fair market value of the house, minus the sale costs; or

(ii) The outstanding balance of the loan.

(e) If the borrower mortgaged less than one hundred percent of the full value of the house, the amount owed by the borrower must not be greater than the outstanding balance of the loan or the percentage of the fair market value (minus sale costs, as provided in the contract), whichever amount is less;

(f) The lender must enforce the debt only through the sale of the property and must not obtain a deficiency judgment against the borrower.

(6) Fee disclosure. Using conspicuous, bold sixteen-point or larger type, you must disclose in the loan agreement any interest rate or other fees to be charged during the period that commences on the date that the reverse mortgage loan becomes due and payable, and that ends when repayment in full is made.

(7) Deed of trust disclosure. The first page of any deed of trust securing a reverse mortgage loan must contain the following statement in sixteen-point boldface type: "This deed of trust secures a reverse mortgage loan."

(8) Ancillary products. You or any other party that participates in the origination of a reverse mortgage loan must not require an applicant for a reverse mortgage to purchase an annuity, insurance, or other financial product as a condition of obtaining a reverse mortgage loan. You or the broker of a reverse mortgage loan must not:

(a) Offer an annuity, insurance, or other financial product to the borrower prior to the closing of the reverse mortgage or before the expiration of the borrower's right to rescind the reverse mortgage agreement;

(b) Refer the borrower to anyone for the purchase of an annuity, insurance, or other financial product prior to the closing of the reverse mortgage or before the expiration of the borrower's right to rescind the reverse mortgage agreement;

(c) Provide marketing information or sales leads to anyone regarding the prospective borrower or receive any compensation for such an annuity, insurance, or other financial product sale or referral; or

(d) You or any other party that participates in the origination of a reverse mortgage loan must maintain safeguards, acceptable to the department of financial institutions, to ensure that you do not provide reverse mortgage borrowers with any other financial or insurance products and that individuals participating in the origination of a reverse mortgage loan have no ability or incentive to provide the borrower with any other financial or insurance product.

(9) Borrower counseling. Prior to accepting a final and complete application for a reverse mortgage loan or assessing any fees, you must refer the prospective borrower to an independent housing counseling agency approved by the federal department of Housing and Urban Development for counseling. The counseling must meet the standards and requirements established by the federal department of Housing and Urban Development for reverse mortgage counseling. You must provide the borrower with a list of at least five independent housing counseling agencies approved by the federal department of Housing and Urban Development, including at least two agencies that can provide counseling by telephone. Telephone counseling will only be used for counseling at the borrower's request. You must create and maintain a form that includes the borrower's signature for telephone counseling requests.

(10) Counseling certification. You must not accept a final and complete application for a reverse mortgage loan from a prospective applicant or assess any fees upon a prospective applicant without first receiving a certification from the applicant or the applicant's authorized representative that the applicant has received counseling from an agency as described in subsection (9) of this section. The certification must be signed by the borrower and the agency counselor, and must include the date of the counseling and the names, addresses, and telephone numbers of both the counselor and the borrower. Electronic facsimile copy of the housing counseling certification satisfies the requirements of this subsection. You must maintain the certification in an accurate, reproducible, and accessible format for the term of the reverse mortgage plus three years.

(11) Minimum age. You may not make a reverse mortgage loan to any Washington state resident unless that resident is a minimum of sixty years of age as of the date of execution of the loan.

(12) Advances. Except for the initial disbursement of moneys to the closing agent, you must issue advances directly to the borrower, or his or her legal representative, and not to an intermediary or third party.

(13) Rescission rights. The borrower in a proprietary reverse mortgage transaction has the same right to rescind the transaction as provided in the Truth in Lending Act, Regulation Z, 12 C.F.R. ((See-226)) Part 1026.

(14) Property appraisals. Prior to execution of the loan and at the end of the loan term, you must obtain an independent appraisal of the property value, or use the current year's tax assessment valuation of the property. You must provide copies of these appraisals to the borrower within five days of the borrower's written request, provided the borrower has paid for the appraisal.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-900 What requirements must I comply with when servicing residential mortgage loans? In addition to complying with all other provisions of this act you must:

(1) Other applicable laws, regulations, and programs. Comply with the following:

(a) ((~~Chapters~~)) Chapter 61.24 ((~~and 19.148~~)) RCW and any other applicable state or federal law, regulation, and program. ((~~Any con-~~

~~flict that arises between this chapter and chapter 19.148 RCW will be resolved in favor of this chapter.))~~

(b) Comply with the federal Servicemembers Civil Relief Act.

(c) A violation of an applicable state or federal law, regulation, or program is a violation of this act.

(2) Servicing and ownership transfers or sales.

(a) ~~((As to))~~ When acquiring servicing rights from another servicer you must:

(i) Continue processing loan modification requests and honoring trial and permanent modifications;

(ii) Designate the homeowner as a third-party intended beneficiary in any subsequent contract for transfer or sale, unless doing so would violate another state law or federal HAMP or GSE modification programs requirements; and

(b) ~~((As to))~~ When transferring or selling the servicing of loans with pending modification requests or trial or permanent modifications you must:

(i) Inform the successor servicer if a loan modification is pending;

(ii) Obligate the successor servicer to accept and continue processing loan modification requests and to honor trial and permanent loan modification agreements; and

(iii) Designate the homeowner as a third-party intended beneficiary in any contract for transfer or sale, unless doing so would violate state law or federal HAMP or GSE modification programs requirements.

(3) Payment processing and fees.

(a) You must accept and credit all amounts received within one business day of receipt when the borrower has made the payment to the address where instructed, provided, that the borrower has provided sufficient information to credit the account. If you use the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date must be credited no later than the due date. You must apply the payment as specified in the loan documents.

(b) You may enter into a written contract with the borrower whereby you hold funds of a certain type or sent by a certain method for a period of time until the funds are available before crediting them to the borrower's account.

(c) You must notify the borrower if a payment is received but not credited and instead placed in a suspense account. You must mail the notification to the borrower within ten business days by mail at the borrower's last known address. The notification must identify the reason the payment was not credited or treated as credited to the account, as well as any actions the borrower must take to make the residential mortgage loan current. If you provide monthly or more frequent statements that include this information you are not required to provide the information in a notice in addition to the monthly or more frequent statement. In the event of a conflict between this subsection (3)(c) or (d) of this section immediately following or both, and the requirements of an applicable bankruptcy court order, compliance with the bankruptcy court requirements are considered compliance with the subsections.

(d) When the suspense account contains enough money to make a full payment, you must apply that payment to the mortgage as of the date the full amount became available in the suspense account.

(e) You must assess any incurred fees to a borrower's account within forty-five days of the date on which the fee was incurred. You

must clearly and conspicuously explain the fee in a statement mailed to the borrower at the borrower's last known address no more than thirty days after assessing the fee. If you provide monthly or more frequent statements that include this information you are not required to provide the information in a notice in addition to the monthly or more frequent statement.

(f) If you provide monthly or more frequent statements that include the information required under this subsection, you have until January 1, 2013, to program these changes. On and after January 1, 2013, you must be in compliance with this subsection.

(4) Maintenance of the escrow account.

(a)(i) If you collect escrow amounts held for the borrower for payment of insurance, taxes, or other charges with respect to the property, you must collect and make all payments from the escrow account and, to the extent you have control, ensure that no late penalties are assessed or other negative consequences result for the borrower.

(ii) At least annually, or upon the borrower's request, you must inform the borrower in writing of the amount of reserve required in an escrow account. The notice must also advise the borrower of any fees the borrower will incur for not maintaining the reserve amount or fees the borrower will incur if you advance escrow amounts on the borrower's behalf and then collect the amounts from the borrower. You must comply with (a)(ii) of this subsection beginning on January 1, 2013.

(b) You may enter into a written agreement with the borrower whereby you are not required to make escrow payments unless funds are available in the escrow account. The agreement must include language that puts the borrower on notice that the borrower is responsible for the payment of the escrow amounts if a sufficient amount is not maintained in the escrow account.

(c) You must notify the borrower within ten business days of any change to the escrow account, other than the changes brought about by the borrower's regularly scheduled payment, that will change the borrower's escrow payment amount. Examples of changes requiring notification include, but are not limited to, hazard insurance premiums, a reduction in the required reserve amount for the account, or a change in the property's tax assessment.

(5) Borrower requests for information.

(a) You must make a reasonable attempt to comply with a borrower's request for information about the residential mortgage loan account, including a request for information about loss mitigation, and to respond to any dispute initiated by the borrower about the loan account. A reasonable attempt includes, but is not limited to:

(i) Maintaining written or electronic records of each written request for information involving the borrower's account until the residential mortgage loan is paid in full, sold, or otherwise satisfied;

(ii) Providing a written statement to the borrower within fifteen business days of receipt of a written request from the borrower, or by following the response timelines for any loss mitigation program. The borrower's request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and sufficient detail regarding the information sought by the borrower to permit the servicer to comply.

(b) You must provide at a minimum the following information to a borrower's request described in subsection (5) of this section:

(i) Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default;

(ii) The current balance due on the residential mortgage loan, including the principal due, the amount of funds, if any, held in a suspense account, the amount of the escrow balance known to the servicer, if any, and whether there are any escrow deficiencies or shortages known to the servicer;

(iii) The identity, address, and other relevant information about the current holder, owner, or assignee of the residential mortgage loan; and

(iv) The telephone number and mailing address of an individual servicer representative with the information and authority to answer questions and resolve disputes ~~((and to act as a single point of contact for the homeowner during loss mitigation. This individual servicer representative must have the authority and ability to perform the following duties:~~

~~(A) Explain loss mitigation options and requirements;~~

~~(B) Track documents submitted by the homeowner and documents provided to the homeowner;~~

~~(C) Inform the homeowner of the status of their loss mitigation process;~~

~~(D) Ensure the homeowner is considered for all loss mitigation options; and~~

~~(E) Access individuals with the authority to delay or stop foreclosure proceedings.~~

~~You must comply with (b)(iv) of this subsection beginning on January 1, 2013)).~~

(c) You must promptly correct any errors and refund any fees assessed to the borrower resulting from an error you made.

(d) If the content of your response meets the requirements under RESPA for a response to a qualified written request, you will be deemed in compliance with the content requirements of this subsection. You must still comply with (c) of this subsection.

(e) In addition to the statement described in (a) of this subsection, a borrower may request more detailed information from a servicer, and the servicer must provide the information within fifteen business days of receipt of a written request from the borrower. The request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and provide sufficient detail to the servicer regarding information sought by the borrower. If requested by the borrower, this statement must also include:

(i) A copy of the original note, or if unavailable, an affidavit of lost note, with all endorsements; and

(ii) A statement that identifies and itemizes all fees and charges assessed under the loan servicing transaction and provides a full payment history identifying in a clear and conspicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the borrower, and other activity on the residential mortgage loan including escrow account activity and suspense account activity, if any.

(iii) The period of the account history shall cover at a minimum the two-year period prior to the date of the receipt of the request for information. If the servicer has not serviced the residential mortgage loan for the entire two-year time period, the servicer must provide the information going back to the date on which the servicer

began servicing the home loan and identify the previous servicer, if known. If the servicer claims that any delinquent or outstanding sums are owed on the home loan prior to the two-year period or the period during which the servicer has serviced the residential mortgage loan, the servicer must provide an account history beginning with the month that the servicer claims any outstanding sums are owed on the residential mortgage loan up to the date of the request for the information.

(iv) If the borrower requests this statement, you must provide it free of charge; but the borrower is only entitled to one free statement annually. If the borrower requests more than one statement annually, you may charge thirty dollars for the second and subsequent statements.

(6) Loss mitigation.

(a) The obligation to assign an individual servicer representative with the information and authority to answer questions and resolve disputes and to act as a single point of contact for the homeowner during loss mitigation attaches when the borrower requests loss mitigation. This individual servicer representative must have the authority and ability to perform the following duties:

(i) Explain loss mitigation options and requirements;

(ii) Track documents submitted by the homeowner and documents provided to the homeowner;

(iii) Inform the homeowner of the status of their loss mitigation process;

(iv) Ensure the homeowner is considered for all loss mitigation options; and

(v) Access individuals with the authority to delay or stop foreclosure proceedings.

(b) You must comply with all timelines and requirements for the federal HAMP or GSE modification programs if applicable, including denials and dual tracking prohibitions. If not using a HAMP or GSE loan modification program, you must:

(i) Develop an electronic system, or add to an existing system, the ability for borrowers to check the status of their loan modification, at no cost. The system must also allow communication from housing counselors. The system must be updated every ten business days. You have until April 1, 2013, to develop the system described in (a)(i) of this subsection. On and after April 1, 2013, you must be in compliance with (a)(i) of this subsection.

(ii) Review and make a determination on a borrower's completed loan modification application within thirty days of receipt.

(iii) Provide in the loan modification denial notice the reasons for denial and an opportunity for the homeowner to rebut the denial within thirty days. If the denial is due to the terms of an agreement between you and an investor, you must provide the name of the investor and a summary of the reason for the denial. If the denial is based on a net present value (NPV) model, you must provide the data inputs used to determine the NPV. Any loan modification denials must be reviewed internally by an independent evaluation process within thirty days of the denial determination or the mailing of the notice of denial to the borrower, whichever occurs earlier. See (b) of this subsection for additional requirements on borrower appeals.

(iv) Review and consider any complete loan modification application before referring a delinquent loan to foreclosure.

(v) Give a homeowner ten business days from your notice to them to correct any deficiencies in their loan modification application.

(vi) Stop the foreclosure from proceeding further if you receive a complete loan modification application. See (a)(viii) and (ix) of this subsection.

(vii) If the borrower accepts a loan modification verbally, in writing, or by making the first trial payment, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(viii) Review and consider a complete loan modification application if received prior to thirty-seven days before a scheduled foreclosure sale. If you offer the borrower a loan modification, you must delay a pending foreclosure sale to provide the borrower with fourteen days in which to accept or deny the loan modification offer. If the borrower accepts a loan modification, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(ix) Perform an expedited review of any complete loan modification application submitted between thirty-seven and fifteen days before the scheduled foreclosure sale. If you offer the borrower a loan modification, you must delay a pending foreclosure sale to provide the borrower with fourteen days in which to accept or deny the loan modification offer. If the borrower accepts a loan modification, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

((b+)) (c) As to borrower appeals of loan modification denials you must:

(i) Give the borrower thirty days from your written notice of denial to request an appeal unless the denial is due to:

- (A) An ineligible mortgage;
- (B) An ineligible property;
- (C) The borrower did not accept the offer; or
- (D) The loan was previously modified.

(ii) Give the borrower the opportunity to obtain a full appraisal for purposes of contesting appraisal data used in a denial based on NPV.

(iii) Respond to the borrower's appeal within thirty days of receipt.

(iv) Provide the borrower with a description of any other loss mitigation option available if you uphold the denial.

((e+)) (d) When a loan modification is granted, you must provide the borrower with a copy of the fully executed loan modification agreement within thirty days of receipt of the signed agreement from the borrower. A loan modification granted orally must be reduced to a written document with a summary of all of the terms and must be provided to the borrower within thirty days of approval of the loan modification.

((d+)) (e) If a loan payment forbearance is granted, you must provide the borrower with, at a minimum, a confirming letter of approval. The letter must contain the essential terms of the forbearance and must contain the name and contact information of specialist who is the borrower's primary or contact with the company.

(f) You must maintain adequate staffing levels and systems to comply with this section, including staffing and systems to track and maintain loan modification documents submitted by homeowners.

((e+)) (g) You must make public all necessary information to inform homeowners about and allow homeowners to apply for your proprietary first and second lien modifications.

~~((f))~~ (h) You must make public all necessary information to inform homeowners about your short sale requirements.

~~((g))~~ (i) You must allow a homeowner to apply for and receive a short sale determination before the homeowner puts a house on the market.

(7) Foreclosure.

(a) Before you refer a loan to foreclosure, you must document in the loan file evidence to substantiate the borrower's default and your right to foreclose. The file must also contain loan ownership information.

(b) If a borrower's property goes into foreclosure and the foreclosure sale occurs, you must notify the borrower within three business days of sale of the completion of the sale. You must mail the notification to the borrower's last known address provided to you.

(8) Contracting with other parties. You must adopt written policies and procedures for the oversight of third-party providers including, but not limited to, foreclosure trustees, foreclosure firms, subservicers, agents, subsidiaries, and affiliates. You must maintain the policies and procedures as part of your books and records and must provide them to the department when directed to do so.

(9) See also WAC 208-620-551.